



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 36 of 1972

An Act relating to the Marketing of Oats, to establish and constitute the South Australian Oats Board and to provide for matters incidental thereto.

[Assented to 13th April, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "Oats Marketing Act, 1972".

Short title

2. This Act shall come into operation on a day to be fixed by proclamation.

Commencement.

3. This Act is divided as follows:—

Division of Act.

PART I—PRELIMINARY

PART II—THE BOARD

PART III—ADMINISTRATION

PART IV—DELIVERY AND MARKETING OF OATS

PART V—MISCELLANEOUS

PART VI—POLLS ON CONTINUATION OF THE ACT.

PART I**Definitions.****4. In this Act unless the contrary intention appears—**

“licensed receiver” means a person licensed under this Act to receive oats on behalf of the Board:

“member of the Board” includes the member of the Board for the time being appointed chairman of the Board:

“oats” includes the grain known by that name, not being wild oats, growing crops of that grain, gristed grain of that name and grain of that name treated in any other manner or by any process converted into the product of grain of that name:

“the Board” means the South Australian Oats Board established under section 5 of this Act:

“wild oats” means the following species of the genus *avena* that is to say—

(a) *A. barbata*, Pott ex Link.;

(b) *A. fatua*, L.;

(c) *A. ludoviciana*, Durieu.;

and

(d) *A. sterilis* L.

PART II**The Board.****PART II****THE BOARD**

5. (1) A board by the name of the “South Australian Oats Board” is hereby established.

(2) The Board—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) subject to this Act, shall be capable of acquiring, taking or letting out on lease, holding, selling or otherwise disposing of real or personal property;

(c) may in its corporate name and capacity sue and be sued;

and

(d) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

(3) Where a document purporting to bear the common seal of the Board is produced before any court or person acting judicially that court or that person, as the case may be, shall, unless the contrary is proved, presume—

(a) that the document purporting to bear the common seal of the Board bears the common seal of the Board;

and

(b) that the common seal was duly affixed and properly attested to.

6. (1) Subject to this section the Board shall consist of five members of whom— Composition of the Board.

(a) two shall be persons appointed by the Governor;

and

(b) three shall be persons elected tri-ennially by growers of oats in accordance with the regulations.

(2) At an election of members of the Board every person, who in the last season before the election harvested for sale oats grown on not less than twelve hectares of land shall, subject to the regulations, be entitled to vote.

(3) From amongst the persons referred to in paragraph (a) of subsection (1) of this section the Governor shall appoint a person to be the chairman of the Board.

(4) Every member of the Board—

(a) appointed by the Governor shall hold office as such until the day expressed in his instrument of appointment (not being more than three years from the day on which he was last appointed) as being the day on which he shall cease to hold office, but a member of the Board appointed to fill a casual vacancy in the office of such a member shall hold office only for the unexpired portion of the term of the member in whose place he was appointed;

or

(b) elected by growers of oats in accordance with the regulations shall hold office until the conclusion of the election next succeeding the election at which he was elected.

(5) If a casual vacancy occurs in the office of a member of the Board elected by growers of oats—

(a) before the expiration of twelve months from the day on which the last occupant of the office was elected, an election of a member shall be held in accordance with the regulations to fill that vacancy, but the person elected shall hold office only for the unexpired portion of the term of the member in whose place he was elected;

PART II

or

- (b) on or after the expiration of twelve months from the day on which the last occupant of the office was elected, the Governor may appoint a person to fill that vacancy and the person so appointed shall for all purposes be deemed to be a member elected by the growers of oats but that member shall hold office only for the unexpired portion of the term of the member in whose place he was appointed.

(6) A member of the Board is eligible for re-appointment or re-election as the case may be.

Acceptance of office as a member not to be a bar to the holding of any other office.

7. Notwithstanding any other Act or law, a person shall not be disqualified by appointment as a member of the Board from holding office as a member of the Board and also any other office or place or from accepting or retaining any fees or other remuneration provided for by or under this Act, or otherwise, in respect of his service as such a member.

Removal from office of member.

8. The Governor may, by notice in writing served on a member of the Board remove the member from office on grounds of misconduct or incapacity to perform his duties and functions as a member.

Casual vacancies.

9. The office of a member of the Board shall become vacant if—

- (a) he dies;
- (b) he resigns by written notice given to the Minister;
- (c) he is removed from office by the Governor pursuant to section 8 of this Act;
- (d) he is absent without leave of the Minister from three consecutive meetings of the Board;
- (e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar;
- (f) he is convicted of an indictable offence;

or

- (g) he is convicted of any other offence and receives notice in writing from the Minister discharging him from office on the ground of that conviction.

PART II

10. (1) The common seal of the Board shall not be affixed to any instrument except in pursuance of a resolution of the Board.

Common seal,
meetings and
quorum.

(2) Any instrument executed in pursuance of such a resolution shall be attested by the signature of two members of the Board.

(3) The procedure for the calling of meetings of the Board and for the conduct of business at such meetings shall, subject to this Act, be as determined by the Board.

(4) Any three members of the Board of whom not less than one shall be a person referred to in paragraph (a) of subsection (1) of section 6 of this Act shall constitute a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board and shall have and may discharge all the powers, duties and functions of the Board.

(5) A decision carried by the majority of the votes cast by the members of the Board present at a meeting of the Board shall be the decision of the Board.

(6) The Board shall cause accurate minutes to be kept of its proceedings at meetings.

11. Each member of the Board shall be paid, out of the funds of the Board, remuneration for his services, and allowances and reimbursements for travelling and living away from home on journeys taken in the course of his duties at such rates as are determined by the Minister.

Salary and
allowances of
members of
the Board.

12. (1) The chairman of the Board shall preside at all meetings of the Board at which he is present and in addition to a deliberative vote, shall, in the event of equality of votes, have a second or casting vote.

Chairman and
presiding
member.

(2) In the absence of the chairman of the Board from any meeting of the Board the members of the Board present shall, from amongst their own number, elect a member to preside at that meeting and at that meeting the member so elected shall have and may exercise the powers and functions conferred on the chairman of the Board by this section.

13. No act, proceeding or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any such member.

Validity of
acts, etc., of
Board.

14. (1) In the exercise of its powers under section 19 of this Act, the Board shall appoint a person to be the secretary to the Board.

Secretary to
the Board.

PART II

(2) The secretary to the Board shall have and may exercise, perform and carry out such powers, functions and duties as are conferred on him by or under this Act or as are directed to be exercised, performed or carried out by the Board.

Board may make use of services of employees of public service.

15. The Board may, with the approval of the Minister and the consent of the Minister controlling any department of the public service of the State and on such terms as may be mutually arranged make use of the services of any of the officers or employees of that department.

Members not, as such, subject to Public Service Act.

16. A member of the Board shall not, as such, be subject to the Public Service Act, 1967, as amended, but this section does not affect the rights, duties and obligations under that Act of any such member who is otherwise an officer in the public service of the State.

Member to declare interest.

17. Where a member of the Board becomes aware that he has a financial interest other than such an interest as a grower of oats in any matter before the Board he shall not—

(a) refuse or fail to declare that interest to the secretary to the Board;

or

(b) act as such a member in relation to any such matter.

PART III**PART III****ADMINISTRATION**

Administration of Act.

18. (1) The Board shall, under the Minister, have the administration of this Act.

(2) For the purposes of any Act or law, the Board shall not be the Crown or an instrumentality of the Crown.

Officers.

19. (1) For the purpose of the administration of this Act the Board may appoint officers and other employees.

(2) The terms and conditions of appointment and employment of the officers and employees of the Board shall be as determined by the Board.

(3) Without limiting the generality of subsection (2) of this section, the Board may, with the approval of the Minister, determine that for the purposes of the accrual of, or the payment of a lump sum in lieu of the grant of, long service leave or for the purposes of the accrual of leave on account of illness or other pressing necessity, previous service under the Public Service Act, 1967, as amended, or under any Act repealed by that Act, by an officer or employee of the Board shall to the extent and for the purposes determined be regarded as service as an officer or employee of the Board.

(4) The remuneration and allowances of the officers and employees of the Board engaged in the administration of this Act shall be paid out of the funds of the Board.

20. (1) The Board may license any person to receive oats on behalf of the Board. Licensed receivers.

(2) A licence granted pursuant to this section may contain such terms and conditions as are fixed by the Board and such a licence may be revoked or suspended upon breach by the holder thereof of any such term or condition.

21. The Board may do all or any of the following things, namely— Powers of Board.

- (a) purchase or otherwise acquire, sell or otherwise dispose of, prepare for sale, treat, store, protect, transport or handle any oats, oat skins, oat bran, oat pollard, cornsacks, jute or jute products;
- (b) borrow money to enable it to exercise any of the powers or functions conferred on it by this Act, and give security over any of its assets for repayment of money so borrowed;
- (c) exercise in relation to oats any functions usually exercised by shipping agents;
- (d) act as agent for the Commonwealth or any State in connection with the purchase and sale of oats;
- (e) expend money derived from the sale of oats on experiments, research, operations or work, whether carried out by the Board or any other person, the object of which is to improve or discover means of improving the quality of seed oats;
- (f) charter ships or other vessels, and transport therein oats and other cargo;

and

PART III

- (g) do any other acts or things and enter into and carry out any transactions (including the purchase or sale of any property) which are necessary or convenient to be done, entered into or carried out for giving effect to this Act, or which are incidental to the exercise of any power or function of the Board.

**Inspection of
oats and
books.**

22. (1) For the purposes of this Act any person authorized in writing by the Board to act under this section may enter any premises and inspect any stocks of oats, and any accounts, books and documents relating to oats.

(2) Any person who hinders or prevents any entry or inspection by any person duly authorized under this section shall be guilty of an offence.

**Care of
property of
Board.**

23. Any person having any property of the Board in his possession or under his care shall take all reasonable precautions to prevent damage to or the deterioration or loss of that property.

**Accounts and
audit.**

24. (1) The Board shall keep proper accounts of all its financial transactions and shall prepare a balance-sheet and a statement of its receipts and payments at least once a year.

(2) The Board shall at all times keep a copy of its last annual balance-sheet and statement of receipts and payments affixed in a conspicuous place in that part of its office which is open to the public.

(3) The Board shall have its accounts and balance-sheet audited by a qualified auditor approved by the Minister.

(4) The accounts of the Board relating to oats of each season shall be kept separately from the accounts relating to oats of other seasons, and in each season separate accounts shall be kept for milling and feed grade oats respectively.

**Appeals
against
decision of
Board.**

25. (1) A person dissatisfied with a decision or action or proposed decision or action of the Board, may in writing request the Minister to review that decision, or action, or proposed decision or action.

(2) The Minister—

- (a) shall give the person making the request, and the Board, an opportunity to submit to him any information or arguments relevant to the matter of the request;

and

- (b) may give the Board a direction relating to the matter of the request.
- (3) Any such direction shall be binding on the Board.

PART IV

PART IV

DELIVERY AND MARKETING OF OATS

26. (1) The Board may by notice published in the *Gazette* fix a day to be the appointed day for the purposes of this section.

Sale and
delivery of
oats.

(2) Subject to this section, after the appointed day a person shall not sell or deliver oats to any person other than the Board.

(3) Subsection (2) of this section shall not apply to or in relation to oats—

- (a) retained by the grower thereof for use on the farm where they were grown;
 - (b) sold or delivered to a person by the Board;
 - (c) sold or delivered to any person with the approval of the Board;
 - (d) sold or delivered to any primary producer for use by that primary producer in his business of primary production;
 - (e) sold or delivered in consequence of a sale at an auction market in accordance with a permit granted by the Board;
- or
- (f) the subject of trade, commerce or intercourse between States or oats acquired by the purchaser thereof for any of the purposes of such trade, commerce or intercourse.

(4) A person shall not, without the written approval of the Board, buy oats, to which subsection (2) of this section apply, from the grower thereof.

(5) A person shall not transport oats bought in contravention of subsection (4) of this section and in any prosecution for an offence that is such a contravention it shall lie upon the defendant to prove that the oats, in relation to which it is alleged that the contravention occurred, were not bought in contravention of that subsection.

(6) In this section—

“appointed day” means the day fixed as the appointed day by notice under subsection (1) of this section:

PART IV

“primary producer” means a person, firm or partnership whose business is wholly or mainly that of primary production:

“primary production” means the business of agriculturist, pastoralist, grazier, dairy farmer, pig farmer, poultry farmer or mixed farmer.

Return of
certain oats
sold or
delivered.

27. (1) A grower of oats who, after the appointed day as defined in section 26 of this Act, sells or delivers oats to any primary producer for use by that primary producer in his business of primary production shall not later than the last day of July and the last day of January in each year forward to the Board a return in the prescribed form containing the prescribed particulars of all such sales or deliveries that occurred in the six months ending respectively on the last day of June and the last day of December immediately preceding that last day of July and that last day of January.

(2) Where a person fails to comply with subsection (1) of this section, for the purposes of subsection (1) of section 33 of this Act that failure shall be deemed to continue so long as the return required by that subsection has not been forwarded notwithstanding that the time for so forwarding that return has elapsed.

Delivery of
oats.

28. (1) Any person may deliver oats to the licensed receiver who is authorized by the Board to accept oats from the area where those oats were grown, or to accept those oats.

(2) Delivery of oats to a licensed receiver shall for purposes of this Act be delivery to the Board.

(3) Upon delivery of oats to the Board, unless it is otherwise agreed—

(a) the property in the oats shall pass to the Board forthwith; and

(b) the owner of the oats shall be deemed to have sold them to the Board at the price to be paid under this Act.

Receiver to
hold oats.

29. A licensed receiver—

(a) shall hold, on behalf of the Board, all oats the property of the Board which are at any time in his possession; and

(b) shall not part with the possession of any such oats except in accordance with instructions from the Board or from a person authorized by the Board to give such instructions.

30. (1) Any person who, after the prescribed day, consigns or delivers to a licensed receiver any oats harvested before that day, shall make and forward to the licensed receiver a declaration correctly stating the season during which those oats were harvested.

Declaration to be provided as to old season's oats.

(2) For the purposes of this section "the prescribed day" means the day which, in respect of each season, is declared by the Board by notice published in the *Gazette* to be the final day of that season.

31. (1) The Board shall market or otherwise dispose of to the best advantage all oats delivered to it under this Act.

Duty of Board to market oats.

(2) In marketing or disposing of oats the Board shall have regard to the reasonable requirements of persons requiring oats for use or consumption in this State.

(3) Subject to this Act, the whole of the money received by the Board from the sale or other disposal of oats shall be applied by the Board in making payments to growers and paying the expenses of administering this Act.

32. (1) The Board shall pay the owner of any oats sold to it the price of those oats as determined by the Board.

Price to be paid for oats.

(2) In determining the price to be paid for oats the Board shall take into account—

- (a) the amount received or to be received by the Board from the sale of oats of the same classification and season;
 - (b) the expenditure incurred by the Board in connection with transporting and marketing the oats and the administration of this Act;
 - (c) the expenditure incurred by the Board in connection with the establishment of a reserve fund or any scheme for the amortization of the capital amounts and interest thereon expended for or in relation to facilities for the storage of oats;
 - (d) the place at which the oats are delivered to the Board;
- and
- (e) any other circumstances that, in the opinion of the Board, affects the value of the oats.

(3) The Board may make progress payments, of such amount as the Board deems reasonable, on account of any money payable or about to become payable by the Board to any person as the price of oats.

PART IV

(4) If after the Board has made payments to growers for oats of any season, there remains a balance of the proceeds of the sale of such oats which is so small that, in the Board's opinion, it is inexpedient to make a separate distribution of it among the growers, the Board may transfer that balance to a reserve fund to meet unforeseen contingencies and any such reserve fund may be invested by the Board in such securities as it deems suitable, and the income thereof shall also be paid into the reserve fund.

(5) If at any time the Board considers that the reserve fund is greater than the amount required to meet unforeseen contingencies, it may transfer any portion of the fund into the current year's revenue from the sale of oats and deal with the amount so transferred as if it were such revenue.

(6) The Board may use any money in the reserve fund to meet such liabilities or expenditure of the Board as it deems proper.

(7) The Board may deduct from any money payable to a person under this section any amount specified in a written request made to the Board by any such person and may apply any amount so deducted towards the provision of bulk storage facilities for oats.

PART V**PART V****MISCELLANEOUS****Offences and penalties.**

33. (1) Any person who commits a contravention of, or fails to comply with, any provision of this Act, shall be guilty of an offence.

(2) Any person who is guilty of an offence against this Act shall be liable to a penalty of not more than two hundred dollars.

(3) Proceedings for offences against this Act shall be disposed of summarily.

Regulations.

34. (1) The Governor may make regulations for or with respect to—

(a) requiring any growers of oats to register and reregister with the Board at the prescribed times their names and such other particulars as are prescribed, and requiring growers of oats on ceasing to grow oats to notify the Board thereof;

(b) elections to be held under this Act;

and

- (c) prescribing all matters or things which are required or permitted by this Act to be prescribed or which are necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Any such regulations may prescribe penalties (not exceeding one hundred dollars) for any breach thereof.

PART VI

PART VI

POLLS ON CONTINUATION OF THE ACT

35. (1) Subject to subsection (2) of this section, if at any time after the expiration of a period of two years next following the commencement of this Act there is presented to the Minister a petition signed by not less than two hundred growers of oats, being persons who would be entitled to vote at a poll under this section, requesting that a poll of growers be taken on the question whether this Act shall continue in operation, the Returning Officer for the State shall, as soon as practicable after he receives the register of growers as provided by subsection (3) of this section, hold a poll of growers accordingly.

Polls on
continuation
of this Act.

(2) A poll under this section shall not be held within two years after the holding of any previous poll under this section.

(3) The Minister shall, within three months after the presentation of the petition under this section, transmit the register of growers to the Returning Officer.

(4) Subject to this Act, a poll under this section shall be held and conducted by the Returning Officer for the State—

(a) by post;

and

(b) in such manner as the Returning Officer deems proper.

(5) The Governor may, on the recommendation of the Returning Officer for the State or the Board, make regulations prescribing and providing for any matters necessary or convenient to be prescribed or provided for in relation to polls to be held under this section.

(6) A person shall have the same rights of voting at any poll under this section as he would have if the poll were an election held and conducted under the regulations for the election of a member of the Board.

PART VI

(7) If not less than thirty per cent of the growers who are entitled to vote at the poll so vote and of the growers so voting not less than sixty per cent vote against the continuance of this Act, the Governor shall, by proclamation or by successive proclamations—

(a) declare that the Board shall be wound up and appoint a person to be liquidator of the Board;

(b) fix a day or days upon which the provisions of this Act will cease to have any force or effect and may so fix different days in respect of different provisions of this Act;

and

(c) fix a day (not being earlier than any day fixed under paragraph (b) of this subsection) as the day upon which this Act shall expire.

(8) A poll under this section shall not be invalid by reason of any defect or any informality unless that defect or informality has affected the decision given on the question submitted at the poll.

Expiration of
this Act.

36. This Act shall expire upon the day (if any) fixed for the expiration of this Act under paragraph (c) of subsection (7) of section 35 of this Act.

In the name and on behalf of Her Majesty, I hereby assent
to this Bill.

J. M. NAPIER, Governor's Deputy